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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/988,777 | 11/20/2001 | Pertti Tormala | 2880/351 | 9117 |

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WASHINGTON, DC 20005

EXAMINER

IZQUIERDO, DAVID A

ART UNIT PAPER NUMBER

3738

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|---------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 09/988,777 | Applicant(s) TORMALA ET AL. | |
| | Examiner David A. Izquierdo | Art Unit 3738 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 23-32, 38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) 12-21, and 33-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 23-32, 38 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-11, 23-32, and 38-39 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. Claims 1-11, 23-32, and 38-39 are rejected under 35 U.S.C. 102 (a) as being unpatentable over Lehto et al (U.S. Patent Number 6,007,580) in view of Walston et al (U.S. Patent Number 5,507,823). Lehto et al. discloses a joint fixation system and method of treatment comprising:

- At least one cylindrical, bioabsorbable, polymeric spacer (col. 10, lines 43-67).
- At least two connectors comprised of autogenous tissue, capable of restricting lateral movement (col. 5, lines 25-30).
- A polymeric spacer having a porosity between 50 μm and 1000 μm (col. 2, lines 53-56).
- A polymeric spacer comprised of a bioabsorbable fabric and a bioabsorbable film which binds with the fabric (col. 3, lines 20-45).
- A bioabsorbable film comprising bioactive agents (col. 5, lines 32-42).
- A bioabsorbable fabric comprised of at least two different compounds with differing degradation rates wherein a coating, comprising a separate degradation rate can be applied (col. 3, lines 20-45).
- A polymeric spacer comprising fibers with a thickness between 1 μm and 300 μm (col. 12, lines 1-3).

3. However, Lehto et al. fails to disclose a joint fixation system comprising connectors which do not penetrate the spacer. Walston et al. discloses a joint prosthesis wherein the connectors (62 and 68, 63 and 69) do not penetrate the bioabsorbable spacer. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the connectors of Walston et al, which do not penetrate the bioabsorbable spacer (Figures 6-9), with a joint fixation system, as per Lehto et al. the motivation to combine being that the connectors transmit force over the entire cross-section of the bioabsorbable spacer (col. 5, lines 1-5).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Izquierdo whose telephone number is 571-272-1943. The examiner can normally be reached on Monday through Friday from 8:00 am until 4:30 pm.
6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David A. Izquierdo



TOM BARRETT
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700